STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

CONSUMERS POWER COMPANY,
a Michigan corporation,
and THE DETROIT EDISON COMPANY,
a Michigan corporation,

Plaintiffs,

v

FRANK J. KELLEY, ATTORNEY GENERAL, RICHARD H. AUSTIN, SECRETARY OF STATE, and BOARD OF STATE CANVASSERS,

Defendants.
_____/

No. 86-56487-CZ

HON. ROBERT HOLMES BELL

John D. Pirich, P.C. (P23204)
Michael J. Hodge (P25146)
MILLER, CANFIELD, PADDOCK AND STONE
Suite 900
One Michigan Avenue
Lansing, Michigan 48933
Telephone: (517) 487-2070
Attorneys for Plaintiffs

Gary P. Gordon (P26290)
Assistant Attorney General
Attorney for Defendants
_____/

PLAINTIFFS' MOTION FOR SUMMARY DISPOSITION

NOW COME Plaintiffs, Consumers Power Company and the Detroit Edison Company, by and through their attorneys, Miller, Canfield, Paddock and Stone, and, pursuant to MCR 2.116(C)(9), state unto and move this Court as follows:

1. The relevant facts necessary for proper disposition of this matter are not in dispute.

2. The instant controversy revolves around the constitutionality of MCLA 168.472a; MSA 6.1472(1) which was declared to contravene Const 1963, art 12, § 2, by Defendant Attorney General. See, 1974 OAG No. 4813, attached hereto as Exhibit A.

3. MCLA 168.472a; MSA 6.1472(1) states that:

> It shall be rebuttably presumed that the signature on a petition which proposes an amendment to the constitution [pursuant to Const 1963, art 12, § 2] or is to initiate legislation [pursuant to Const 1963, art 2, § 9], is stale and void if it was made more than 180 days before the petition was filed with the office of the secretary of state.

4. Const 1963, art 12 § 2, provides for a manner of amending the Constitution by petition of the registered voters of this state where, among other things, the petition sets forth the full text of the proposed amendment, it is signed by a number of registered voters equal to ten percent (10%) of the total vote cast for all candidates for governor at the last preceding general election, and the petition is filed "with the person authorized by law to receive" such at least 120 days before the election.

5. Article 12, § 2 specifically provides for legislative implementation of its provisions and states that "[a]ny such petition [for constitutional initiative] shall be in the form, and shall be signed and circulated in such manner, as prescribed by law," and that "[t]he person authorized by law to receive such petition shall upon its receipt determine, as prescribed by law, the validity and sufficiency of the signatures on the petition . . ." (Emphasis added.)

6. The Constitutional Convention reveals that the provisions of art 12, § 2 were intended to provide but a "bare skeleton" or "a minimum that was necessary" for the initiative process, with the Legislature effecting implementation.

7. The discussions held at the Constitutional Convention further evince a clear intent to safeguard the constitutional initiative process and not to promote its use.

8. MCLA 168.472a; MSA 6.1472(1) was enacted pursuant to Const 1963, art 12, § 2, and the Legislature's authority to safeguard the right to initiative, to prevent fraud and abuse, to assure the validity of signatures, and to provide greater certainty that persons signing the petition are still registered voters of the state.

9. The 180-day rule of § 472a obviates the problem of inadvertent duplicate signatures attendant to any petition circulated over a long period of time.

10. The 180-day rule of § 472a increases the likelihood that the voters signing the petition are still residents of the state.

11. The 180-day rule of § 472a ensures that the petition reflects the will of the people signing it in that, over a longer period of time, intervening acts of the Legislature or agencies of the executive branch may result in the desired action being taken other than by constitutional amendment with the result that the petition is no longer representative of the will of the persons signing it.

12. MCLA 168.472a; MSA 6.1472(1) represents a valid exercise of legislative authority pursuant to art 12, § 2.

13. In 1974 OAG, No. 4813, the Attorney General failed to distinguish between art 2, § 9 -- the process for initiating legislation -- and art 12, § 2 -- the process for initiating constitutional amendments -- by relying upon art 2, § 9 principles which are inapplicable to art 12, § 2.

14. In 1974 OAG, No. 4813, the Attorney General improperly relied upon principles applicable to Const 1908, art 17, § 2 -- the predecessor provision to art 12, § 2 -- which principles do not govern consideration of art 12, § 2.

15. The Attorney general in 1974 OAG, No. 4813 reached an erroneous and improper result and conclusion.

16. Defendants have failed to set forth a valid defense to this action, and there is no dispute as to any material fact.

WHEREFORE, Plaintiffs request that this Court grant their Motion for Summary Disposition and the relief requested in their Complaint for Declaratory Judgment.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE,
Attorneys for Consumers Power Company
and Detroit Edison Company

By _____
John D. Pirich, P.C. (P23204)

By _____
Michael J. Hodge (P25146)
Business Address:
Suite 900
One Michigan Avenue
Lansing, Michigan 48933
Telephone: (517) 487-2070

Dated: July 7, 1986

KJMM-ts/090